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MEERA E. DEO,  
 UNEQUAL PROFESSION:  
 RACE & GENDER IN  
 LEGAL ACADEMIA  
 (Stanford Univ. Press  
 2019)

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Danielle M. Conway, *Building An Anti-Racist Law School*, LEX MAGAZINE (Drexel Law School, 2022).

“To achieve antiracism goals requires understanding American structural racism, the American legal architecture that supports it, the disproportionate impact that racist policies and practices have had on people of color and how these processes reinforced interlocking forms of oppression, such as white supremacy and patriarchy.”

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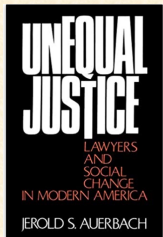
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### History: Legal Education in the United States

- White Supremacy
- Patriarchy
- Heteronormativity
- Classism
- Capitalism
- Colonialism



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### History: Legal Education in the United States

1. Who designed U.S. legal education as a graduate enterprise?
2. Who were the original end-users?

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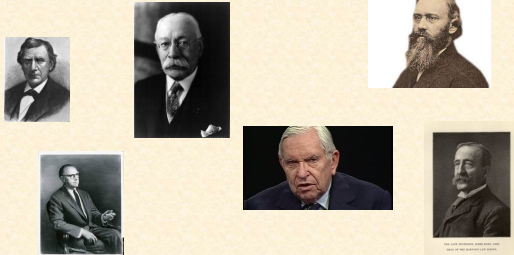
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### Who designed legal education in the United States?



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### 1835 – Alexis De Tocqueville, Democracy in America



“[L]awyers form the highest political class and the most cultivated portion of society. . . . If I were asked where I place the American aristocracy, I should reply without hesitation that it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and bar.” ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 288 (1954).

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### Antebellum times: A profession for enslavers in the master class

- A legal education will be of great benefit to the “large number of young men who intend to devote themselves to the honorable employment of cultivating the [slave plantations] they inherit from their fathers. To them a knowledge of the general principles of law is inestimable value.” - Lumpkin Law School Brochure, 1859 (soon to become University of Georgia)
- Many young gentlemen whose parents were planters and men of large means, attended the school in order to make themselves more accomplished citizens, and without intending to follow the [legal] profession as a business. Chancellor N. Green, The Law School of Cumberland University, 2 Green Bag 63, 65(1890).

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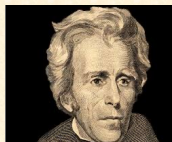
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### Jacksonian Democracy: Entry into the legal profession



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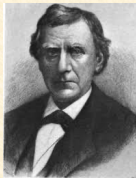
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Concerns about standards in the legal profession:  
George Sharswood, Essay on Legal Ethics (1854)

- “Let business seek the young attorney.”
- “A horde of pettifogging, barratrous, custom-seeking, money-making lawyers, is one of the greatest curses with which any state or community can be visited.”




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“A pestiferous horde [will] be set loose upon the profession if standards [are] not raised.” –George Wickersham (of Cadwalader, Wickersham, & Taft)



Quoted in Jerold S. Auerbach, *Unequal Justice, Lawyers and Social Change in Modern America* 121 (Oxford Univ. Press 1976).

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ASSOCIATION OF AMERICAN LAW SCHOOLS

ARTICLES OF ASSOCIATION

*Adopted at Saratoga, N. Y., August 28, 1900*

The undersigned Law Schools in the United States, represented by delegates duly appointed by their respective faculties, do hereby form an Association to be called the Association of American Law Schools, and establish the following as its Articles of Association:—

*First:* The object of the Association is the improvement of legal education in America, especially in the Law Schools.

*Second:* The Association shall meet annually at the time and place at which the American Bar Association meets. The Executive Committee may call additional meetings at such time and place as the

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### The flirtation with rankings begins, early 1900s.

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16

### The flirtation with rankings begins, early 1900s.

**Annual Tuition Fees in Law Schools.**

A LIST of the law schools that charge a tuition fee of \$50.00 and upward per annum.

School	Tuition
University of Pennsylvania Law School	\$100.00
Yale University Law School	100.00
Harvard University Law School	100.00
Boston University Law School	100.00
Columbia University Law School	100.00
University of Chicago Law School	100.00
Northwestern University Law School	100.00
New York Law School	100.00
New York University Law School	100.00
Brockley Law School	100.00
Roosevelt Law School	100.00
Washburn and Law University	100.00
Georgetown University Law School	100.00
Georgetown University Law School	100.00
Albany Law School	100.00
Buffalo Law School	100.00
Cornell University Law School	100.00
Rutgers University Law School	100.00
Case Western Reserve University Law School	100.00
Western Reserve University Law School	100.00
St. Louis Law School	100.00
University of Virginia Law School	100.00
University of Denver School of Law	100.00
Duke University School of Law	100.00
Yale University Law School	100.00
Harvard University Law School	100.00
Columbia University of America Law School	100.00
Ratio, Coles of 1st	75.00

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### Prestige is touted

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During the past three years Yale University has conferred the degree of Doctor of Laws upon fifty-seven men, among the recipients being:

Thodore Roosevelt, President of the United States.

Elihu Root, Secretary of War.

James Burrill Angell, President of the University of Michigan.

James Goodson Carter, for many years President of the Bar Association of the City of New York.

Joseph Hodges Choate, Ambassador of the United States at the Court of St. James.

Merrill Weston Fuller, Chief Justice of the United States.

Kameo Hatakeyama, Professor of Law in the University of Tokyo.

William Peterson, Principal of McGill University.

Seah Low, for many years President of Columbia University.

Frieder Fiodorovich Martens, Professor of International Law, Executive, in the University of St. Petersburg.

John Bassett Moore, Hamilton Fish Professor of International Law in Columbia University.

Richard Olney, former Secretary of State.

Winchew Reid, Editor of the New York Tribune.

William Thomas Sampson, Rear Admiral of the United States Navy.

Jacob Gould Schurman, President of Cornell University.

James Bradley Thayer, Professor of Law in Harvard University.

Marquis Hirobumi Ito, for many years Prime Minister of Japan.

William Halsey Harvey, President of the University of Chicago.

Charles Curtis Harrison, Provost of the University of Pennsylvania.

John Hay, Secretary of State.

John Ireland, Archbishop of St. Paul.

Francis Lindsay Patton, for many years President of Princeton University.

Henry Codman Potter, Bishop of New York.

Benjamin Ide Wheeler, President of the University of California.

Henry Cabot Lodge, United States Senator from Massachusetts.

Nicholas Murray Butler, President Columbia University.

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18

### Recruiting the Teaching Branch of the Profession

[Report of Special Committee presented to the Association of American Law Schools at its meeting in Chicago, December 20, 1920.]

The Special Committee on Recruiting the Teaching Branch of the Profession was appointed as the result of action taken by the Association at its last meeting. As originally constituted, Dean Fraser, of the University of Minnesota Law School, was Chairman, but during the summer he found himself compelled to resign, much to the regret of the rest of the Committee. As a result of the change of Chairman, the Committee did not undertake any program of work until this fall. It has, therefore, no large accomplishments to report.

It is the understanding of the Committee that it was constituted for the purpose of interesting good men in law teaching, of informing such men of the opportunities, and of the conditions in the teaching field, and of bringing young men who want to enter law teaching into touch with schools which want law teachers. It is the understanding of the Committee that it was constituted for the purpose of

desire such information, and to give to young men interested information with regard to the teaching branch of the profession. In order that this may be done we shall need your help.

"We feel that we can probably best reach the young men still in Law Schools who are thinking of teaching through a notice posted on Law School bulletin boards, a copy of which we inclose. Will you be good enough to see that this is kept conspicuously posted?"

"You will frequently know of men who have graduated and are in practice, but who seem to you particularly fitted for law teaching. Will you either inform such men of the function of the Committee, or send to our Committee the names and addresses of such men?"

"Men who are thinking of entering upon the teaching of law will naturally want to know what are the immediate and future possibilities in that field. Will you those

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William Draper Lewis,  
The Law Teaching  
Branch of the Profession,  
5 Am. L. Sch. Rev. 447  
(1925).

it is practically impossible for the law teacher to obtain large financial returns. We may be certain that the young man whose heart is set on "great riches" will not be happy as a law teacher, he had better not be a lawyer at all. Still, the prospective income for teaching law, to be reasonable from the point of view of a young man who feels that he has real ability and the possibility of a successful future in the practice of the law, must assure him that he and (usually later) his family will at the very least have the economic means to mingle socially with other educated persons in his community, and he must have the assurance of power to save.

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and the enthusiasm that the practice work does, carried along those lines.

W. G. Hastings, of the University of Nebraska:  
I have prepared no discussion of the President's address. If I had it is too late to deliver it. When I saw that my friends, Deans Irvine and Harker, were to discuss this subject of the Organization and Administration of Law Schools, after the President had gone over it, I was sure that there would be no occasion, even if there was time, for me to go into it. In listening to their remarks, as well as to the Chairman's address, I have been impressed with the fact that the impelling motive of our students in the law schools is ambition for social and political power and that the schools must be organized with a view to give him the kind of knowledge which will help that ambition.

Proceedings of the Tenth Annual Meeting, 1910 AALS  
Proceedings I, 5, 6 (1910) (remarks of W.G. Hastings,  
University of Nebraska).

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Some of them may be absolutely careless until the most examinations approach, and yet not altogether vicious; they are not degenerates. Many of those men are going to make good lawyers some time. Now those men should be protected against their own tendencies to procrastination, their own tendencies towards idleness. I realize all that. But there is another side of the question. It is the duty of the law school to offer all of its facilities to students seeking to become masters of the profession. By their facilities I mean not only their material equipment, but the abilities, the learning, the energies of the professors. I do not think we should adopt any system or pursue any method for the purpose of holding up the comparatively few idle and careless students if by so doing we are sacrificing in any degree the needs of the great majority of earnest students. I believe that any system devised for the purpose of seeing that the work is kept up from day to day and pursued earnestly should also be devised with this principle always in view—that the serious earnest student,

Proceedings of the Tenth Annual Meeting, 1910 AALS Proceedings 1, 5, 6 (1910) (remarks of Dean Irvine, Cornell University).

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who after all is entitled to the best that there is in us, must not be sacrificed for the benefit of the careless.  
 The absolutely worthless student will go overboard anyhow. The man with careless tendencies can be saved often without sacrifice of the great mass of the students, for I believe the great mass of the students are serious and earnest. It is altogether a question of balance. What can we do with the small class carelessly inclined without sacrificing the mass of earnest students? The doubt I would have as to the system proposed by the President is that it may lay too great emphasis on the smaller class. If a student be pursuing four or five subjects at a time his system would require four hours, at least, additional class-room work. It would require the preparation of those questions by the professor. It <sup>seemingly</sup> require a certain degree of supervision by the

Proceedings of the Tenth Annual Meeting, 1910 AALS Proceedings 1, 5, 6 (1910) (remarks of Dean Irvine, Cornell University).

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### AALS: How were decisions made?

MR. WALTER GELLHORN [Columbia University]: This proposal, Mr. President and Colleagues, comes as most things in this Association do, out of conversations in the corridors and in smoke-filled rooms. Its purpose, simply summarized, is that we should give some formal substance to the policies we have endorsed, to the educational philosophy we have adopted as sound, at one meeting after another; namely, that law instruction should not be carried on in isolation from the rest of the academic community, but should so far as possible be a part of a larger educational endeavor, drawing to itself some of the insights and strengths that come from other branches of intellectual act.

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Lost Inclusion: law schools of the 1920s (now extant)

- Birmingham School of Law (Birmingham, AL)
- College of the Pacific (Stockton, CA)
- Lincoln College of Law (Bakersfield, CA)
- Lincoln University College of Law (San Francisco, Los Angeles)
- St. Mary's College of Law (Oakland, CA)
- Polytechnic Law School (Los Angeles, CA)
- University of St. Ignace Law School (San Francisco, CA)
- Westminister Law School (Denver, CO)
- Hartford College of Law (Hartford, CT)
- YMCA Law School (Washington, DC)
- John M. Langston School of Law (Washington, DC)
- Knights of Columbus Evening School (Washington, DC)
- Dixon's Night Law School (Tampa, FL)
- People's National University Law School (Atlanta, GA)
- Chicago Law School (Chicago, IL)
- Mayo Federated Colleges, College of Law (Chicago, IL)
- Tri-State College of Law (Angola, IN)
- Benjamin Harrison Law School (Indianapolis, IN)
- Law Department, Central Normal College (Danville, Indiana)
- Jefferson School of Law (Louisville, KY)
- **Purita Law School (Boston, MA) is law school dedicated to women**
- Southeastern Massachusetts Law School (Fall River, MA)
- Northwestern College of Law (Minneapolis, MN)
- YMCA Law School (Minneapolis, MN)
- YMCA Law School (St. Joseph, MO)
- Benton College of Law (St. Louis, MO)
- University of Omaha School of Law
- Judge Peff's Law Class (Raleigh, NC)
- Wilmington Law School (Wilmington, NC)
- YMCA Night Law School (Cincinnati, OH)
- Newark Law Class (Newark, OH)
- YMCA Law School (Dayton, OH)
- Okmulgee Law School (Okmulgee, OK)
- Clarence Mills Law Class (Oklahoma City, OK)
- Chattanooga Law School (Chattanooga, TN)
- John Randolph Neal College of Law (Knoxville, TN)
- Galveston Institute of Law (Galveston, TX)
- YMCA Law School (Dallas, TX)
- Jefferson School of Law (Dallas, TX)
- Norfolk College of Law (Norfolk, VA)
- YMCA Law School (Norfolk, VA)
- Milwaukee College of Law (Milwaukee, WI)

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Simple Question: When did AALS adopt a nondiscrimination policy prohibiting racial discrimination in its member schools?

- (a) 1951
- (b) 1955
- (c) 1961
- (d) 1962

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26

Simple Question: When did AALS adopt a nondiscrimination policy prohibiting racial discrimination in its member schools?

- (a) 1951
- (b) 1955
- (c) 1960
- (d) 1962

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27

### The 1955 attempt to draft a non-discrimination policy at AALS

The Pennsylvania resolution: "A member school and a school to be acceptable for admission shall . . . provide equality of opportunity without discrimination or segregation on the ground of race or color."



Seven votes in favor: Boston College, Creighton, Duke, Howard, Penn, Rutgers, Yale

Karl Llewellyn's remarks on the resolution: "[T]he Pennsylvania resolution, in my opinion, is an effort to enforce a credo on persons who have no business to have credos enforced upon them."

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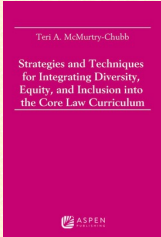
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### AALS and Racial Trauma

"At this critical point in the history of legal education, law schools were developing views and attendant policies about law school admissions and curricula that are responsible for much of the racial trauma minoritized law students experience in the present day."



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When did AALS adopt a nondiscrimination policy prohibiting discrimination on the basis of sex?

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When did AALS adopt a nondiscrimination policy prohibiting discrimination on the basis of sex?

1970

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Additional examples of exclusionary conduct in the Legal Academy

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32

1960s/1970s/1980s

Hostile response to clinical and skills-based legal education.

I hope that clinical work “w[ill] not be allowed to displace **truly substantial and difficult intellectual work.**” Erwin Griswold, Harvard Law School Bulletin, Vol. 21, No. 5 June 1970.



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33

1960s/1970s/1980s

Hostile response to clinical and skills-based legal education.

“We are . . . concerned that **an anti-intellectual tendency** of clinical education will offer an allure to students and to some faculty members who seek ‘relevance’ at any price.” Herbert L. Packer & Thomas Ehrlich, *New Directions in Legal Education* 46 (Report Prepared by the Carnegie Foundation) (McGraw Hill 1972).

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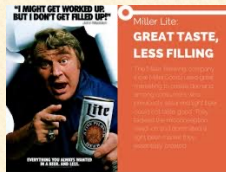
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1960s/1970s/1980s

Hostile response to clinical and skills-based legal education.

“[A]s a group[,] clinical teachers (1) were not the best performers in law school, (2) are young and inexperienced in comparison with the bar as a whole, (3) do not work in elite law firms or with anything approximating such firms’ facilities and resources, and (4) because they work with novices on relatively simple cases (usually by pedagogical choice), they are not likely to be on the frontiers of new skill developments.” Robert J. Condlin, “*Tastes Great, Less Filling*”: *The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 63 (1986).



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1960s/1970s/1980s

Hostile response to clinical and skills-based legal education.

The work of teaching students legal writing skills is “**donkey work**.” William Pedrick and William A. Reppy, Jr., *Should Permanent Faculty Teach First-Year Legal Writing? A Debate*, 32 J. LEGAL EDUC. 413, 414 (1982).



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1960s/1970s/1980s

Hostile response to clinical and skills-based legal education.

The “**m]ommy-track**” is a good solution to the problem of finding legal research and writing instructors. “The school will pay them a few thousand dollars per school year for the part-time teaching.” Larry Smith, *Tulane Taps ‘Mommy Track’ for Legal Writing and Research Instructors*, 11 LAW, HIRING & TRAINING REP. 9, 13 (Aug. 1991):



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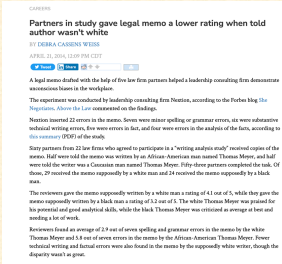
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But we’ve come a long way, right?



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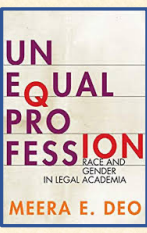
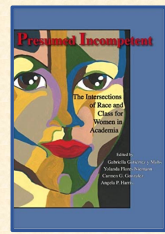
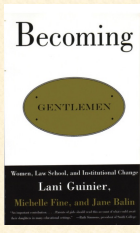
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